House REPUBLICAN Conference

FloorPrep

Legislative Digest

Thursday, July 1, 1999

J.C. Watts, Jr.
Chairman
4th District, Oklahoma

House Meets at 10:00 a.m. for Legislative Business

Anticipated Floor Action:
H.R. 775—Y2K Readiness and Responsibility Act (Conference Report)
Motion to Go to Conference on H.R. 1401 (FY 2000 National Defense Authorization Act)
H.R. 10—Financial Services Act

★ ★ ★

H.R. 775—Y2K Readiness and Responsibility Act (Conference Report)

Floor Situation: The House is scheduled to consider the conference report to H.R. 775 as its first order of business today. Conference reports are privileged and may be considered any time three days after they are filed. They are debatable for one hour, may not be amended, and are subject to one motion to recommit. On June 30, the Rules Committee granted a rule waiving all points of order against the conference report and its consideration.

Summary: The conference report to H.R. 775 seeks to curb the costs of litigation associated with the year 2000 (Y2K) computer problem, which many experts predict may cause scores of computer systems to fail at midnight, January 1, 2000. The Y2K glitch is born of decades-old computer programming that recognizes calendar years by their last two digits—a memory space-saving technique whose consequences were unforeseen. The extent of any damage this problem may cause is, for the most part, unknown. However, over 80 Y2K lawsuits already have been filed; 790 demand letters for new Y2K suits (sent prior to filing) have been issued as well. Against this backdrop, the measure is intended to steer resources into *fixing* the Y2K problem rather than allow litigants to exploit it.

The conference report requires potential plaintiffs, before filing a Y2K action, to give 30 days written notice of (1) any symptoms of a material defect alleged to have caused injury; (2) the injury allegedly suffered; (3) the facts that led the potential plaintiff to hold the person or entity responsible for both the defect and the injury; and (4) the relief or action sought. The potential defendant will then have 60 days to fix the problem. No lawsuit may filed until 90 days after the date the written notice is given.

The measure allows either party, at any time during the 90-day period, to request that the other party use alternative dispute resolution—where binding decisions are made outside the traditional court system. To recover damages, plaintiffs must have taken steps to avoid or fix Y2K problems of which they reasonably should have been aware. The conference report permits defendants to introduce evidence of their "good faith" efforts to fix the Y2K problem.

The conference report establishes a $250,000 limit (or three times actual damages, whichever is less) on punitive damages awarded in Y2K lawsuits, in addition to 100 percent recovery of any losses incurred, for businesses with 50 or fewer employees.

Under the conference report, defendants may be held liable only for the proportion of the judgment that corresponds to the percentage of actual fault—e.g., a defendant may be required to pay for 25 percent of damages if he is found to be 25 percent at fault. However, the conference report includes four instances in which the defendant may not be held proportionately liable, but instead held joint and severally liable (i.e., responsible for a percentage of damages beyond what the defendant actually caused).

Specifically, these four exceptions apply in cases where: (1) the defendant acted with specific intent to injure the plaintiff or knowingly committed fraud; (2) a share of the damages is uncollectible (e.g., a co-defendant is bankrupt and cannot pay his share), in which case the defendant may be held liable for twice the amount for which he is responsible, as well as an additional 50 percent of the defendant's base proportion if he acted with reckless disregard; (3) a share of the damages are uncollectible and the plaintiff's net worth is less than $200,000, or the damages the plaintiff seeks amount to more than 10 percent of his net worth; and (4) a share of the damages is uncollectible and the plaintiff is a "consumer"—i.e., an individual who did not intend to resell the product he bought—bringing an individual suit (as opposed to a class action). The conference report stipulates that these provisions do not preempt state laws that limit a defendant's liability or protect him or her from joint and several liability.

The conference report allows facilities that, because of a Y2K failure, were in temporary noncompliance with federal regulations (e.g., environmental) regarding measurement, reporting, or monitoring to waive federal penalties—provided that the facility did not otherwise violate the underlying regulations and the temporary violation did not cause imminent or actual harm to public health, safety, or the environment.

The conference report also:

* stipulates that a class action seeking less than $10 million in damages or filed by fewer than 100 plaintiffs must be remanded to state court. If the plaintiffs seek punitive damages, then the action may be heard in federal court;

* stipulates that if plaintiffs rely on a defendant's fraudulent representation about the Y2K readiness of a product as the basis for a lawsuit, then those plaintiffs may be relieved of their affirmative duty to mitigate—i.e., take steps to avoid Y2K damage based on information disclosed by the defendant;

* mandates that a plaintiff who suffers economic damages may sue under tort law only if the defendant intentionally committed an act, such as fraud, that was extraneous to the underlying contract; and

* prohibits financial institutions from foreclosing on residential mortgages if the homeowner defaulted on his or her mortgage payment because of a Y2K failure that occurred between December 16, 1999, and March 15, 2000.

Views: The Republican leadership supports passage of the conference report. The president has indicated that he will sign the legislation.

Additional Information: See *Legislative Digest*, Vol. XXVIII, #13, May 7, 1999; and #19, Pt. III, June 30, 1999.

★ ★ ★

Motion to Go to Conference on H.R. 1401 (FY 2000 National Defense Authorization Act)

Floor Situation: Mr. Spence or a designee is expected to offer a motion to go to conference on H.R. 1401 after the House completes consideration of the conference report to H.R. 775. A motion to instruct may be made immediately after this request and before the chair appoints conferees. Instructions are considered the prerogative of the minority and are debatable for one hour.

Summary: The motion, if agreed to, will establish a House-Senate conference to resolve differences between H.R. 1401, which passed the House by a vote of 365-58 on June 10, 1999, and the Senate version (S. 1059), which passed by a vote of 92-3 on May 27, 1999. Once agreed to, the motion permits the chair to appoint conferees. Details of a possible motion to instruct were unavailable at press time.

Views: The Republican Leadership strongly supports the motion to go to conference and opposes any motion to instruct conferees that would weaken the position of House negotiators.

Additional Information: See *Legislative Digest*, Vol. XXVIII, #15, Pt. III, May 26, 1999.

★ ★ ★

H.R. 10—Financial Services Act

Floor Situation: The House will consider H.R. 10 after it appoints conferees to H.R. 1401. Yesterday, the Rules Committee granted a structured rule providing 90 minutes of general debate, equally divided between the chairmen and ranking minority members of the Banking & Financial Services and Commerce Committees. The rule makes in order as base text an amendment in the nature of a substitute consisting of the text of the Rules Committee print dated June 24, 1999, and waives all points of order against the substitute. It also makes in order 11 amendments, debatable in the order listed and for the amount of time specified below. The chairman of the Committee of the Whole may postpone votes and reduce the voting time on a postponed vote to five minutes, so long as it follows a regular 15-minute vote. Finally, the rule provides one motion to recommit, with or without instructions.

Summary: H.R. 10 is designed to modernize the financial services industry by replacing outdated, Depression-era laws that separate banking from other financial services with a new system to enhance competition and increase consumer choice. The measure's five main areas of reform are outlined below.

* **Financial Holding Companies and Operating Subsidiaries**. H.R. 10 repeals the anti-affiliation provisions of the 1933 Glass-Steagall Act and the 1956 Bank Holding Company Act, therefore allowing financial companies to offer a broad array of financial products to their customers, including banking, insurance, securities, and other financial products—either through a financial holding company or through operating subsidiaries. In order to engage in the new financial activities authorized under the bill, all banks affiliated under the holding company or through operating subsidiaries must be well-capitalized, well-managed, and have at least a satisfactory Community Reinvestment Act rating. The bill establishes a coordinated review process for approving new financial activities between the Federal Reserve and the Treasury Secretary.

* **Securities Functional Regulation**. The measure amends the 1934 Securities Exchange Act to provide functional regulation of bank securities activities (i.e., as a general matter, securities activities will be regulated by the Securities and Exchange Commission). The bill repeals the "broker" and "dealer" exemptions that banks currently enjoy under the federal law (with certain exemptions), thus subjecting banks to the same regulation as all other securities firms. The measure replaces the broad "broker" and "dealer" exemptions with narrow exemptions to allow banks to continue to engage in current activities. The bill gives the SEC the primary role in determining if a new "hybrid" product offered by a bank may be sold directly through the bank or through a broker-dealer.

* **State Law and Insurance Sales**. The measure establishes the state insurance regulator as the appropriate functional regulator of insurance. Generally, the bill preempts state laws regulating affiliations between insurance companies and banks. However, states may regulate insurance activities only to the extent that the regulation does not "prevent or significantly interfere" with affiliations between banks and insurance firms or with bank insurance activities. The bill establishes 13 "safe harbor" areas in which a state may regulate a bank's sales of insurance without being preempted. State laws enacted before September 3, 1998, that are not protected by the safe harbor may be challenged under the Supreme Court decision in *Barnett Bank* v. *Nelson*. As is currently the case, the OCC will receive judicial deference in its interpretation of national bank insurance powers. State laws passed after September 3 that are not covered by a safe harbor may be preempted if they have a discriminatory impact on banks (even if they are neutral on their face). *Barnett's* preemption standard will continue to apply to these new laws, but the OCC will not be accorded deference in court.

* **Thrift Charter**. The measure prohibits commercial entities from acquiring or establishing thrifts (i.e., closing a loophole in current law that allows a commercial company to purchase only one thrift, hence the term "unitary thrift holding company") after March 4, 1999. The bill, however, grandfathers existing unitary thrift holding companies (UTHCs) and those that were formed before March 4 (i.e., they may continue to engage in any commercial activity). The measure continues to allow existing thrifts to be sold to commercial firms. However, the bill establishes an application process whereby the Federal

Reserve Board and the Office of Thrift Supervision will determine whether a grandfathered UTHC may be sold to a commercial firm.

* **Financial Privacy**. H.R. 10 includes a number of provisions designed to protect consumer privacy. Specifically, the bill requires financial institutions to disclose their privacy policies to their customers, which must include (1) the depository institution's policy on disclosing customer information to third parties, other than agents of the institution, for marketing purposes; and (2) the rights of the consumer under the Fair Credit Reporting Act, including the right to prohibit certain information from being shared with affiliates of the depository institution. In addition, the bill requires insurance companies to protect the confidentiality of their customers' individually identifiable health and medical information. Finally, the measure makes it unlawful for any person to obtain, solicit, or disclose customer information from a financial institution under false pretenses (i.e., pretext calling).

During the 105th Congress, the House passed financial services legislation (H.R. 10; *H.Rept. 105-164, Pts. I-IV*) by a vote of 214-213. The Senate considered a similar measure last Congress, but did not complete consideration before it adjourned. A CBO cost estimate on the measure made in order by the rule was unavailable at press time. The bill was introduced by Mr. Leach *et al.* and was approved by the Banking & Financial Services Committee by a vote of 51-8 on March 11 and the Commerce Committee by voice vote on June 10.

Views: The Republican leadership supports passage of the measure. An official Clinton Administration viewpoint was unavailable at press time.

Amendments: The rule makes in order the following 11 amendments to H.R. 10, debatable in the order listed and for the amount of time specified below:

Mr. Burr will offer an amendment, debatable for 10 minutes, to stipulate that a financial holding company that otherwise meets all requirements for grandfathering non-financial activities may acquire a federally-regulated communications company owned by an insurance holding company since January 1, 1998 (and thus not be subject to certain expansion limitations in the bill). ***Staff Contact: Peter Hahn, x5-2071***

Ms. Schakowsky, Ms. Lee, Mr. Gutierrez, and Mr. Watt will offer an amendment, debatable for 10 minutes, to require that the U.S. Treasury—along with federal banking regulators—conduct a five-year study on the bill's effect on lending to small businesses and farms and recommend appropriate legislative and regulatory changes. ***Staff Contact: Bernard Fulton (Schakowsky), x5-2111***

Mr. King and Ms. Velazquez will offer an amendment, debatable for 10 minutes, to modify provisions in the bill authorizing the Federal Reserve to impose restrictions on foreign banks. The sponsor contends that the amendment will provide equal treatment for foreign banks that transact business in the United States. ***Staff Contact: Joseph Mondello (King), x5-7896***

Messrs. Paul, Barr, and Campbell will offer an amendment, debatable for 10 minutes, to (1) eliminate the authority of the Treasury Secretary to require "Know your Customer" regulations; (2) replace "Suspicious Activity Reports" (SARs) with a "safe harbor" for financial institutions to report transactions that may violate federal law or regulations; (3) adjust the Currency Transaction Report (CTR) limit for inflation and add a privacy advocate to the Bank Secrecy Act Advisory Group; (4) prohibit the Treasury Secretary or other federal or state agencies from maintaining Bank Secrecy Act documents after a statute of limitations expires (unless the documents are being used in an ongoing investigation); and (5) require federal banking agencies to recommend ways to conform penalties of the Bank Secrecy Act to those dictating penalties for "safety and soundness" under the Federal Deposit Insurance Act. ***Staff Contact: Brad Jansen (Paul), x5-2831***

Mr. Foley will offer an amendment, debatable for 10 minutes, to allow foreign banks to expand their U.S. operations by opening additional branches if approved by the appropriate chartering agency (the OCC or the state bank supervisor) and the Federal Reserve. The 1978 International Banking Act prohibited foreign banks from opening additional branches. While the 1994 Riegle-Neal Act (*P.L. 103-328*) intended to allow foreign banks to open additional branches, technical reinterpretations of the law have precluded them from doing so. In order to qualify, a foreign bank must meet certain home country regulatory requirements and must have existed during the time periods established in the 1994 law. ***Staff Contact: Tara Salem, x5-5792***

Ms. Slaughter will offer an amendment, debatable for 10 minutes, to express the sense of Congress to encourage financial advisors, trust officers, insurance salespersons, and estate planners to treat women fairly in selling wills and trusts. ***Staff Contact: Sally Schaeffer, x5-3615***

Mr. Cook may offer an amendment, debatable for 10 minutes, to strike provisions in the bill that require federal financial regulators to prescribe or revise rules to improve the accuracy and understandability of fee disclosures to customers who acquire financial products. The amendment instead requires the General Accounting Office to study the consequences of limiting—through regulation—commissions, fees, or other costs incurred by customers when purchasing financial products. The sponsor of the amendment contends that a study will highlight any potential negative effects of such regulations before directing regulators to impose rules. ***Contact: x5-3011***

Mrs. Roukema will offer an amendment, debatable for 10 minutes, to require the Securities and Exchange Commission to consult and coordinate comments with the appropriate federal banking agency before taking any action or rendering any opinion about how insured depository institutions or their holding companies report loan loss reserves in their financial statements, including the amount of any such loan loss reserve. ***Staff Contact: Pat McCarty, x5-2258***

Mr. Watt will offer an amendment, debatable for 10 minutes, to clarify that financial institutions and their subsidiaries may not require customers to purchase their insurance products as a condition of receiving a loan and that customers are free to purchase such insurance products from any other source. ***Staff Contact: Erika Jeffers, x5-1510***

Mr. Bliley will offer an amendment, debatable for 10 minutes, to allow mutual insurance companies to transfer to another state and reorganize into a mutual holding company or stock company. This provision takes effect only in states that have not already enacted laws governing such transactions. Each transfer is subject to approval by the state insurance regulator of the new state, which must determine that the reorganization plan meets several consumer protection requirements. In addition, the amendment prohibits a financial institution from using domestic violence as a criterion for any insurance activity (i.e., when it underwrites, prices, or renews an insurance policy or pays an insurance claim). Finally, the amendment expresses the sense of Congress that states should enact similar anti-discriminatory measures. ***Contact: x6-2424***

Mr. Oxley, Mrs. Pryce, and Mrs. Roukema will offer an amendment, debatable for 30 minutes, to enhance the bill's consumer privacy protections. Specifically, the amendment:

* imposes on all financial institutions an "affirmative and continuing obligation" to respect the privacy of customers and to protect the security and confidentiality of a customer's non-public personal information;

* enhances the disclosure requirements required of financial institutions (i.e., in addition to the bill's requirement that they disclose their policies on releasing customer information to third parties and consumer rights under the Fair Credit Reporting Act). Specifically, the amendment requires financial institutions to disclose their policies for collecting and protecting confidential information;

* allows consumers to "opt-out" of information-sharing policies with unaffiliated third parties (e.g., except for cases involving consumer-initiated transactions, consumer reporting, examination requirements, or complying with federal and state laws and regulations);

* prohibits unaffiliated third parties that receive confidential customer information from a financial institution from sharing this information with any other unaffiliated party for any purpose;

* prohibits financial institutions from disclosing to third parties any credit card, savings, and transaction account numbers for marketing purposes; and

* requires the Treasury Secretary to study current information-sharing practices between affiliates and unaffiliated third parties (the study must be conducted in conjunction with the Federal Trade Commission, the SEC, and federal banking regulators and in consultation with the National Association of Insurance Commissioners, industry representatives, and privacy groups). The report must be submitted to Congress within six months of enactment.

Finally, the amendment requires federal banking regulators to establish standards to ensure the security and confidentiality of customer records and information and protect against its unauthorized access and use. Each regulatory agency must enforce the new privacy protections outlined in the amendment. ***Staff Contact: Bob Foster (Oxley), x5-2676***

Additional Information: See *Legislative Digest*, Vol. XXVIII, #19, Pt. II, June 28, 1999.

★ ★ ★

Brian Fortune: *Managing Editor*

Kevin Smith: *Senior Legislative Analyst*

Mary Rose Baker, Scott Galupo,
Brendan Shields, & Heather Valentine:
Legislative Analysts

House Republican Conference

Legislative Digest

http://hillsource.house.gov/LegislativeDigest